IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.35 OF 2007

Smt Vijaya Ramesh Chogle & Ors. ...Appellants

Versus

Municipal Corpn of Greater Mumbai
and Others ...Respondents

Shri R.M.Nakhwa with Shri Arun H.palekar for the Appellants.
Mrs Geeta Joglekar for the Respondent No.1.
Shri M.K.Nesari for the Respondent No.2.

CORAM : ABHAY S.OKA, J.
DATED : MARCH 16, 2007.

P.C.:

1. Heard learned Counsel appearing for the Appellants-Plaintiffs. The Appellants-Plaintiffs claim to be owners of immovable property which is described in the plaint. The second Respondent, according to the Appellants is a tenant of the Appellants occupying Room No.10 on the first floor of the suit property. The prayer in the suit is for declaration that the first Respondent- Municipal Corporation is not entitled to grant water connection directly from the Municipal main line to the suit premises i.e Room No.10 in addition to the existing water supply. Another prayer is for perpetual injunction restraining the first Respondent from granting water supply to the second Respondent from

the Municipal main line. According to the case of the Appellants, a separate water supply has been granted by the first Respondent to the second Respondent, but effect is not given to the decision of the first Respondent. The contention of the Appellants is that the action of the first Respondent of granting separate water supply to the second Respondent is contrary to the provisions of the Maharashtra Rent Control Act, 1999 as well as 271 of the Bombay Municipal Corporation Act, 1888.

2. A Notice of Motion was taken out in the said suit by the Appellants. The Notice of Motion was for temporary injunction restraining the first Respondent Municipal Corporation from granting water connection directly from the Municipal Main Line to the Room No.10 occupied by the second Respondent. The said prayer has been rejected by the impugned Judgment and Order.

3. The submission of the learned counsel for the Appellants is that the action of the first Respondent of granting water supply is completely illegal and therefore, there was a strong prima facie case for grant of temporary injunction. He submitted that if

additional water supply is given to the second Respondent directly from the main line, it will adversely affect the water supply to the premises occupied by the Appellants. When a query was made by the Court to the learned counsel appearing for the Appellants as to whether there is a specific pleading either in the plaint or in affidavits filed in support of Notice of Motion to the effect that as a result of grant of water supply to the second Respondent the water supply to the Appellants will be affected, the learned counsel appearing for the Appellant stated that no such assertions have been made either in the plaint or in the affidavits filed by the Appellants. It is the contention of the Appellants that water supply to the other tenants in the building will be affected. However, the said tenants have not come forward to take any action against the first or second Respondents. In absence of any pleadings by the Appellants that any loss will be caused to them much less an irreparable loss as a result grant of water supply to the second Respondent, it is obvious that temporary injunction cannot be granted. Even assuming that prima facie case is proved, unless it is established that irreparable loss will be caused to the Plaintiffs if injunction is refused, no

relief can be granted in favour of the Appellants. Only on this ground, no fault can be found with the order impugned passed by the trial Court by which prayer for temporary injunction have been rejected. The result of the impugned order will be now the water supply will be granted to the second Respondent. After the water supply is accordingly granted to the second Respondent, if any prejudice is caused to the Appellants such as reduction of water supply to the tenements of the Appellants, it is always open for the Appellants to take out appropriate proceedings.

4. Subject to what is stated above, no case for interference is made out. Appeal is dismissed. No orders as to costs.

JUDGE